IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 85 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

WINDSOR FOODS LTD

Appearance:

1. INCOME TAX REFERENCE No. 85 of 1991

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1982-83:-

"Whether, on facts and in the circumstances of the case and in law, the Tribunal is right in holding that the amount received as cash compensatory support is not taxable being a capital receipt ?"

2. We have heard Mr BB Naik learned counsel for the revenue and Mr RK Patel learned counsel for the assessee.

3. For holding that cash compensatory support received by the assessee company during the year was not taxable and was exempt as capital receipt, the Tribunal had relied on the decision of the Special Bench of the Income Tax Appellate Tribunal, Delhi in the case of Gadore Tools (India) (P) Ltd. vs. IAC, 25 ITD 193. However, to overcome the effect of the said decision, the Legislature amended the provisions of section 2 (24) and 28 (iiib) of the Act by providing that cash assistance (by whatever name called) received or receivable by any person against export under any scheme of Government of India shall be chargeable to income-tax under the head "Profits and gains of business or profession" and that such assistance shall be included in "income". The aforesaid legislative amendment was made w.e.f. 1-4-1967. The year under consideration is the assessment year 1983-84. Hence, in view of the aforesaid legislative amendment with retrospective effect, cash compensatory support received by the assessee during the year under consideration was taxable as income and was not exempt as capital receipt.

Accordingly, our answer to the question is in the negative i.e. in favour of the revenue and against the assessee.

4. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-